

PROB. 12B
(7/93)

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States District Court

for the

DISTRICT OF HAWAII

SEP 17 2007

at 2 o'clock and 54 P.M.
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: JOEDENNI R. NAGUILLEN Case Number: CR 03-00100DAE-01

Name of Sentencing Judicial Officer: The Honorable David Alan Ezra
U.S. District Judge

Date of Original Sentence: 4/21/2004

Original Offense: Counts 1, 3, 4 and 6: Burglary, in violation of 18 U.S.C. § 13 and
Hawaii Revised Statutes (H.R.S.) § 708-810, Class C felonies.

Original Sentence: Forty-two (42) months imprisonment as to each of Counts 1, 3, 4 and 6 of the Indictment, all such terms and counts to be served concurrently, followed by three (3) years of supervised release as to each of Counts 1, 3, 4 and 6 of the Indictment, all terms to be served concurrently, with the following special conditions: 1) That the defendant is prohibited from possessing any illegal or dangerous weapons; 2) That the defendant provide the Probation Office and the Financial Litigation Unit of the U.S. Attorney's Office access to any requested financial information to include submitting to periodic debtor's examinations as directed by the Probation Office; 3) That the defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition.

The Court also ordered that the defendant shall pay restitution of \$26,740.83 immediately and payable in the indicated amounts to the following victims. Any remaining balance shall be paid during the period of supervision on an installment basis according to the collection policy of the Probation Office but at a rate of not less than 10 percent of his monthly gross income. Interest is waived.

Type of Supervision: Supervised Release Date Supervision Commenced: 6/15/2007

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

Special Condition No. 4: That the defendant serve 4 months of home detention with electronic monitoring as arranged by the Probation Office. During this time, the defendant shall remain at his place of residence during nonworking hours and shall not leave his residence without the approval of the Probation Office. The defendant shall wear an electronic monitoring device and follow electronic monitoring procedures pursuant to the Participant's Agreement and shall earn leave as determined by the Probation Office. The defendant also will be responsible for the payment of the electronic monitoring costs as directed by the Probation Office.

CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1. Standard Condition No. 9	Association with a person convicted of a felony without the permission of the Probation Officer.

On 4/11/2007, while confined at Mahoney Hale as an inmate of the Bureau of Prisons, the offender was oriented to the terms and conditions of supervision and signed a copy of them acknowledging his understanding of the conditions. The offender's supervision commenced on 6/15/2007. On 6/20/2007, the offender was again oriented to the supervised release conditions and was also provided with his signed copy of them.

On 5/12/2007, while still incarcerated at Mahoney Hale, the offender was caught by the facility director associating with fellow resident Vania Fortunato at the Ala Moana Shopping Center. It should be noted that Fortunato's supervision was also assigned to this officer and that she is currently serving a three (3) year term of probation after having been convicted of Count 1: Mail Theft, a Class D felony and Count 2: Identity Fraud, a Class C felony. Revocation proceedings are pending.

On 5/16/2007, in response to the incident, this officer met with the offender at Mahoney Hale in the presence of Fortunato and verbally admonished both of them for their association. Both were advised that association, in any form, would not be tolerated. They were warned that any future association would result in Court action to include the possible initiation of revocation proceedings.

On 8/18/2007, during the course of an unscheduled home inspection at the offender's residence, the offender and Fortunato were observed in the driveway washing the offender's mother's vehicle. The two offenders were also observed hugging and kissing. When confronted about the association, the offender attempted to minimize the encounter and explained that "it wasn't what it looked like." Fortunato remained silent and did not offer an explanation. Moments later, the offender's mother came outside and stated that the offender and Fortunato had been seeing each other "for quite some time" and that Fortunato "is at the house almost everyday."

The offender and Fortunato were verbally admonished for continued association and Fortunato was instructed to leave the premises immediately.

On 8/27/2007, during a scheduled office appointment with this officer, the offender admitted to having purchased cellular telephones and a cellular telephone plan for himself and Fortunato. During a subsequent conversation on 9/10/2007, he further admitted that they had been associating since his release from Mahoney Hale on or about 6/16/2007.

The offender's noncompliance coupled with his deception and the fact that his association commenced immediately upon his release from confinement suggests a lack of respect for his supervision requirements as well as for the criminal justice system. The proposed modification for home confinement with electronic monitoring is intended to impress upon him the seriousness of his violation. It will also allow the Probation Office to monitor and restrict the offender's activities while still affording him the opportunity to work and satisfy his restitution obligation. The offender was verbally admonished for the aforementioned violation and has been warned that future noncompliance will likely result in a request for revocation proceedings.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed

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modification and have no objections to the modification.

Respectfully submitted by,

Timothy M. Jenkins
for:
SYDNEY L. FLEMING
U.S. Probation Officer

Approved by:

Timothy M. Jenkins
TIMOTHY M. JENKINS
Supervising U.S. Probation Officer

Date: 9/14/2007

THE COURT ORDERS:

☒ The Modification of Conditions as Noted Above
☐ Other



DAVID ALAN EZRA
U.S. District Judge

Sept. 17, 2007

Date

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision


I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:


[X] To modify the conditions of supervision as follows:

Special Condition 4: That the defendant serve 4 months of home detention with electronic monitoring as arranged by the Probation Office. During this time, the defendant shall remain at his place of residence during nonworking hours and shall not leave his residence without the approval of the Probation Office. The defendant shall wear an electronic monitoring device and follow electronic monitoring procedures pursuant to the Participant's Agreement and shall earn leave as determined by the Probation Office. The defendant also will be responsible for the payment of the electronic monitoring costs as directed by the Probation Office.

Witness:


SYDNEY L. FLEMING
U.S. Probation Officer

Signed:


JOEDENNI R. NAGUILLEN
Supervised Releasee

8-29-07

Date